SEP 20 1954

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954.

No. 355

ROBERT WENDELL HAINSWORTH, *Petitioner.*

vs.

HARRIS COUNTY COMMISSIONERS' COURT, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS.

ROBERT WENDELL HAINSWORTH

Counsel for Petitioner.
210 Pilgrim Building
222 W. Dallas Avenue
Houston 2, Texas

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IN THE

Supreme Court of the United States

October Term, 1954.

No._____

ROBERT WENDELL HAINSWORTH, *Petitioner.*

VS.

HARRIS COUNTY COMMISSIONERS' COURT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS.

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Robert Wendell Hainsworth, the petitioner herein, prays that a writ of certiorari be issued to review the final judgment of the Supreme Court of the State of Texas.

Reference to Opinions in Courts Below.

The opinion of the Trial Court, (R-C.C.A.-11, 12) is not reported. The opinion of the Trial Court was ren-

dered and entered on the 7th day of August, 1953, and is printed in Appendix B, hereto, *infra,* pp 15-17.

The opinion of the Court of Civil Appeals, (R-C.C.A.-20-23) printed in Appendix B, hereto, *infra,* pp 17-21, is reported unofficially in 265 S.W. 2d 217. The order of the Court of Civil Appeals in refusing the Motion for Rehearing, (R-C.C.A.-27) printed in Appendix B, hereto, *infra,* p 21, is reported unofficially in 265 S.W. 2d 217.

The opinion of the Supreme Court of Texas, (R-Sup. Ct.Tex.-Second Instrument, Per Curiam Opinion) will be reported officially in 153 Texas..... (Page number not yet assigned). Per Curiam Opinion is printed in Appendix B, hereto, *infra,* pp 21, 22. The date of the opinion in the Supreme Court of Texas was May 12, 1954.

The citation to the order of the Supreme Court of Texas Overruling the Motion for Rehearing, (R-Sup.Ct. Tex.-Third Instrument, Certified Copy of Judgment) will be reported officially in 153 Texas_____. (Page number not yet assigned.) The date of the order Overruling the Motion for Rehearing was June 23, 1954, and the order is printed in Appendix B, hereto, *infra,* p 22.

The opinion of the Supreme Court of Texas is also reported unofficially in 269 S.W. 2d 332.

Jurisdiction

1. On the 12th day of May, 1954, the Supreme Court of Texas, stamped the application for Writ of Error of petitioner, Refused. No Reversible Error. (with Per Curiam opinion.)

2. A timely Motion for Rehearing was subsequently filed on May 24, 1954, and the Supreme Court of Texas

on the 23rd day of June, 1954, Overruled this Motion for Rehearing. (R-Sup.Ct.Tex-Third Instrument, Certified Copy of Judgment.)

3. The statutory provisions believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari is Title 28, United States Code, section 1257(3), which provides in part:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:" * * * * "(3) By writ of certiorari, * * * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * * * * of the United States."

Questions Presented for Review.

1. Whether the rule and requirement by the Harris County Commissioners' Court that the petitioner sit at a table designated "Colored", in making use of the Harris County Law Library did not infringe upon any constitutional guaranty to him, and whether such a practice by the Harris County Commissioners' Court is prohibited by the Fourteenth Amendment to the Constitution of the United States?

2. Whether segregation by the State or any political subdivision thereof, solely because of color, such as the restricting and the limiting of a colored person or colored persons from the full, free, and unrestricted use of public facilities in a county courthouse, or of any public facility of the State or political subdivision of the State, by discriminatory practices or signs based solely upon color or race is prohibited by Section 1, of the Fourteenth Amendment to the Constitution of the United States?

Constitutional Provisions and State Statutes Involved.

CONSTITUTION OF THE UNITED STATES.

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VERNON'S TEXAS STATUTES.

1948

Revised Civil Statutes

Articles 1697, 1698, 1699, 1700, 1701, 1702, 1702a-1. - Volume 1, pages 576, 577.

The pertinent text of the above Articles of the Revised Civil Statutes of Texas are set forth in Appendix A, *infra,* pp 13, 15.

Statement of the Case

That in the Harris County Law Library situated in Harris County, Texas, (R-C.C.A.-9, 10), there is a special table, designated "Colored", for the exclusive use of litigants and lawyers who are colored and which is restricted from use by those who are not colored; and when use of the library is made by colored litigants or lawyers one-at-a-time, they are restricted to the use of

such table but when use of the library is made by more of them than one-at-a-time, they are only restricted to the use of whatever table in the library to which they are assigned by the Librarian and the table to which they are assigned is restricted from use by litigants or lawyers who are not colored throughout the time of its being used by those who are colored.

That on December 20, 1951, the plaintiff petitioned the Harris County Commissioners Court to disapprove of the above policy of segregation and of designation of a table in the Harris County Law Library, "Colored", and in their practice of the restrictive use of tables in the Harris County Law Library on the basis of color.

That on January 24, 1952, the Harris County Commissioners Court, the Defendants, denied the petition of the plantiff.

Petitioner then filed suit against the Harris County Commissioners' Court on the grounds that such differences in treatment by the State based upon color or race is precluded by the Fourteenth Amendment to the Constitution of the United States, and petitioned for a writ of mandamus to require the defendants to remove the sign designated "Colored" from the table in the Harris County Law Library, and to stop the arbitrary practice of restricting use of tables in the Harris County Law Library on the basis of color, and for such other or further relief to which plaintiff may be entitled.

Stage in Proceedings and the Manner in Which the Federal Questions were Raised.

The stage in the proceedings in the court of first instance at which and the manner in which the federal

questions sought to be reviewed were raised was in the original petition of plaintiff. (R-C.C.A.-2-5)

The stage in the proceedings in the appellate courts at which, and the manner in which, the federal questions sought to be reviewed were raised, was by Points of Error on appeal from the court of first instance to the Court of Civil Appeals, (R-C.C.A.-33, 34), and by Points of Error on appeal from the Court of Civil Appeals to the Supreme Court of Texas. (R-Sup. Ct. Tex.-First Instrument, Application for Writ of Error, p 2.)

The way in which the federal questions sought to be reviewed were passed upon by the court of first instance and the appellate courts was by opinion of each of the courts.

The copy of the opinions of the court of first instance, and the Court of Civil Appeals and the Supreme Court of Texas, are included in Appendix B, hereto, *infra*, pp 15-17, 17-21, 21, 22.

Reasons Relied On For The Allowance Of The Writ.

1. The Supreme Court of Texas has decided federal questions of substance not heretofore determined by this Court, and has decided the federal questions in a way that is not in accord with applicable decisions of this Court.

While the precise federal questions presented here have not heretofore been determined by this Court, still there have been federal questions presented to the Supreme Court of the United States, in recent cases, which closely parallel the federal questions presented in this case and appear to be controlling. *Elmer W. Henderson vs. The United States of America Interstate Commerce Commission and Southern Railway Company,*

339 U.S. 816; *McLaurin vs. Oklahoma State Regents*, 339 U.S. 637.

Though the *Henderson* case relates to discrimination and segregation based on color or race, at a dining table while engaged in interstate travel, and the instant case relates to discrimination and segregation based on color at a law library table in a County Courthouse, the underlying principle in the two cases is the same, namely, segregation based upon color or race.

In the *Henderson* case, the question was "Whether the rules and practices of the Southern Railway Company which divide each dining car so as to allot ten tables exclusively to white passengers, and one table exclusively to Negro passengers, and which call for a curtain or partition between that table and the others violates Section 3,(1), of The Interstate Commerce Act. That section makes it unlawful for a railroad in interstate commerce "to subject any particular person, * * * * to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: * * * * *"

The Supreme Court of the United States held: That those practices do violate the Act. The Supreme Court said: "The right to be free from unreasonable discriminations belongs, under section 3,(1), to each particular person." * * * "The curtains, partitions and signs emphasize the artificality of a difference in treatment which serves only to call attention to a racial classification of passengers holding identical tickets and using the same public dining facility."

So, in the instant case, it is respectfully submitted that the right to be free from unreasonable discriminations by the State or Governmental instrumentalities of the

State, belongs, under the Fourteenth Amendment to the Constitution of the United States, to each particular person. And the sign "Colored" on a table in the Harris County Courthouse Law Library only emphasizes the artificality of a difference in treatment which serves only to call attention to a racial classification of lawyers or litigants, using the same public facility of Harris County, namely, the Harris County Law Library, which is housed in the Harris County Courthouse.

The result is a conflict of principle in the decision of the Supreme Court of Texas in the instant case, with the decision of the Supreme Court of the United States in the *Henderson* case.

In the *McLaurin* case, the Appellant, *McLaurin,* was assigned to a certain table in the library, and assigned to a special table and restricted in other phases of University life, because of his race and color, and the Supreme Court of the United States held that under the circumstances of the *McLaurin* case, that the Fourteenth Amendment precludes differences in treatment by the state based upon race.

In the *McLaurin* case, the Supreme Court of the United States said that such restrictions impaired and inhibited Appellant's ability to study, to engage in discussions and to learn his profession. In the instant case, such restrictions and practices of segregation, *per se,* and such practices alone, and without more, make for differences in treatment by the State based upon race or color, and makes for inequalities by impinging upon the principle of "the dignity of man", the infringing upon the dignity of the individual so subjected to such restrictions and practices of segregation based upon color or race by the

State, and are in themselves and of such a nature, as to be humiliating, and a deprivation of liberty.

Thus there exists a conflict of principle, if not of decision also, in the ultimate decision of the Supreme Court of Texas in the instant case with the decision of the Supreme Court of the United States in the *McLaurin* case.

Also, a number of decisions of the Supreme Court of the United States have made it clear that the Fourteenth Amendment prohibits a State, an agency of the State or a political subdivision thereof from making classifications based on race or making racial distinctions in the exercise of governmental power. In *Hirabayashi vs. United States,* 320 U.S. 81; in *Korematsu vs. United States,* 323 U.S. 214; and in *Oyama vs. California,* 332 U.S. 633; the Supreme Court of the United States indicated that classifications by governmental agencies based solely on race or ancestry are particularly odious to our principles of equality.

And still in another recent decision, *Bolling vs. Sharpe,* decided by the Supreme Court of the United States on May 17, 1954, (citation not known) this Court said: "As long ago as 1896, this Court declared the principle 'that the Constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the General Government, or by the States, against any citizen because of his race.' * * *." This Court also said in *Bolling vs. Sharpe, supra,* "Although the Court has not assumed to define 'liberty' with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual

is free to pursue, and it cannot be restricted except for a proper governmental objective."

2. The opinion of the Supreme Court of Texas is believed to be erroneous, in that the record as to the facts of the case, as disclosed in the Stipulation of the Parties, (R-C.C.A.-9, 10), which taken together with the Original Petition of the Plaintiff, which was verified by Plaintiff, (R-C.C.A.-5), together with the applicable Statutes of the State of Texas pertaining to County Law Libraries, (R-Sup.Ct.Tex.-First Instrument, Application for Writ of Error-4, 5), printed in Appendix A, hereto, *infra*, together with the Bill of Costs, (R-C.C.A.-18), wherein the Law Library Fee of $1.00 is charged as other costs in accordance with Art. 1702A-1, Revised Civil Statutes of Texas, and is listed and itemized in Bill of Costs, together with the fact that the Honorable Trial Court took judicial notice of the fact that the plaintiff and petitioner was colored and an attorney practicing in Texas, all of which when taken and considered together, and which was before the Supreme Court of Texas, it is respectfully submitted, embody all of the facts necessary to be established by petitioner in order to present for decision the constitutional question of whether the rule and requirement by the Harris County Commissioners' Court that the petitioner sit at a table designated "Colored", in making use of the Harris County Law Library did not infringe upon any constitutional guaranty to him.

The decision of the Supreme Court of Texas decides the federal questions presented in such a way as to call for an exercise of this Court's supervisory powers and correction of a State judgment to the extent that the State judgment incorrectly adjudges federal rights.

3. The Supreme Court of Texas has decided important questions arising under the Fourteenth Amendment to the Constitution of the United States. And the questions presented to the Supreme Court of the United States are questions whose resolution will have immediate importance far beyond the particular facts and parties involved. The important federal questions may be summed up in the important principle, which is a basic principle underlying the Constitution of the United States, namely, the principle of "the dignity of man", the principle of "the dignity of the individual", and upon the proper resolution and determination of the questions presented here, rests the hopes and aspirations of a great many people in a number of the States of the Union, to be free from practices of segregation and discrimination based upon color in State or County buildings, or other public facilities of the State or political subdivisions of the State, which practices of segregation and discrimination based upon color, are put into force and made effective by and through State officers.

If this decision of the Supreme Court of Texas is allowed to stand, it will mean that lawyers and litigants who are colored, in making use of the library facilities in the Harris County Courthouse will be denied the equal protection of the laws, will be humiliated and deprived of liberty in being restricted and required to sit at a designated table with a sign thereon marked "Colored", and will be relegated to a type of second class citizenship.

If this and such similar practices of segregation in County Courthouses and other State buildings are allowed to stand by this Court, it will negate the principle of first class citizenship for all citizens, and will

constitute a denial to them by the State of the guarantee of the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

On the other hand if the Supreme Court of the United States will declare in the instant case that such practices of segregation by the Harris County Commissioners' Court to be unconstitutional, such a decision will enlarge the area of freedom and democracy for all citizens in a number of the States of the Union, and enable each citizen, irrespective of color or race, to walk in humility and in freedom, and in dignity in one's native State and in one's native land, in making use of the State's public buildings and facilities, with dignity equal to that accorded to all other citizens by the State.

For the reasons above stated, it is vital that the questions presented be decided finally by the Supreme Court of the United States.

Conclusion

For the foregoing reasons your petitioner respectfully submits that the writ of certiorari should issue to the end that this Court may review the decision of the Supreme Court of Texas and determine whether that court has deprived petitioner of rights guaranteed by the Fourteenth Amendment to the federal Constitution.

Respectfully submitted,

ROBERT WENDELL HAINSWORTH

Counsel for Petitioner.

APPENDIX A.

State Statutes.

Art. 1697. Establishment of library.— A county law library may be established at the county seat by the commissioners court of any county containing a city of over 160,000 population according to the preceding Federal census. (Acts 1st C. S. 1921, p. 21.)

Art. 1698. Appropriation for library.— The commissioners court of any such county may establish and provide for the maintenance of such law library on its own initiative and appropriate therefor the sum of $20,000.00 or such part thereof as it deems necesary, and shall appropriate each (year) such sum as may be necessary to properly maintain and operate such library. (Id.)

Art. 1699. Rules and Regulations.—Said court may make all rules and regulations necessary or proper for the establishment, maintenance, operation and use of said library not in conflict with the laws of this State. (Id.)

Art. 1700. Custodian.— Upon the establishment of a county law library the commissioners court shall employ a custodian or custodians of such library, who shall receive such pay as said court may fix, Each custodian shall execute a bond in the sum fixed by the court payable to and to be approved by the county judge of said county, conditioned that such custodian will faithfully perform his duties. (Id.)

Art. 1701. Gifts and bequests.— The commissioners court may receive on behalf of the county any gift or bequest for such library. The title to all such property shall be vested in the county. Where any gift or bequest

is made with certain conditions, and accepted by the county, these conditions shall be administered as designated by the donor. (Id.)

Art. 1702. Funds of library.— All funds of such library shall be in custody of the county treasurer of such county. They shall be a separate fund and shall be used for no other purpose than for such library. Each claim against the county law library shall be acted upon in like manner as other claims against the county. (Id.)

Art. 1702A-1. County law libraries in certain counties; management.—Section 1. For the purpose of establishing and maintaining a "County Law Library" for each county coming within the terms of this Act there shall be charged as costs, and taxed, collected, and paid as other costs, the sum of One ($1.00) Dollar in each civil case, except suits for delinquent taxes, hereafter filed in every County or District Court, in each county having eight (8) or more District Courts and three (3) or more County Courts including County Courts at Law. Provided, however, that in no case shall the county be liable for said cost in any civil cases. Such costs shall be collected by the Clerk of the respective Courts, and when collected shall be paid to the County Treasurer, to be kept by him in a separate fund to be known as the "County Law Library Fund"; such fund shall be administered by the Commissioners Court for the purchase, lease or maintenance of a law library, and furniture and equipment necessary thereto, in a place convenient and accessible to the Judges and litigants in such courts, and for the payment of salaries to employees to be appointed by the Commissioners Court; the Commissioners Court of counties affected by this Act shall make rules for the use of books in said library, and shall provide suitable space and shelving for housing same.

The salary of the custodian or librarian and such other employees or assistants as may be necessary shall be fixed by the Commissioners Court and shall be paid out of the funds collected under this Act.

The Commissioners Court of such counties may vest the management of such library in a committee to be selected by the Bar Association of such county, but the acts of such committee shall be subject to the approval of the Commissioners Court.

Sec. 2. The Provisions of this Act may be adopted by any county in this state having five (5) or more District Courts, by the passage of a Resolution to that effect by the Commissioners Court of such county at a regular session thereof with all members of such Court present.

Sec. 3. If any part or parts of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such invalid part or parts thereof would be so declared unconstitutional. (Acts 1943, 48th Leg., p. 297, ch. 192.)

Appendix B.

Copies of Opinions of Courts Below.

No. E-401,906

Robert Wendell Hainsworth	In the District Court
vs.	of Harris County, Texas
Harris County Commissioners	129th Judicial District

Opinion of the Court

Since the oral arguments were heard in this case the other day, briefs have been read, and the court has given

the question involved considerable thought and consideration.

I have reached the conclusion that the United States Supreme Court's authorities cited by the plaintiff as *persuavise* as they are in favor of the relief requested are not applicable to the facts of this case. I take this view particularly in the light of the authorities of the United States Supreme Court cited by defense counsel and generally supporting the idea of segregation under those conditions where equal advantages and privileges are accorded all regardless of color.

Although the trend of the United States Supreme Court's decisions seems to be in the direction of the plaintiff's views, yet under the doctrine of *Stare Decisis* (the rule as to the preceeding case control) they are not sufficient as I see it to justify this court sitting as a judge in a sovereign State generally recognizing the principle of segregation, to issue its drastic Writ of Mandamus to override the Law Library Committee of this county and the government of Harris County, in its present plan of operating the law library for the benefit of the Bar generally.

The only complaint presented in this case is one as to segregation alone and it does not even hint at any different treatment as between white and colored lawyers generally. There is no different treatment assigned as to location of study tables, light, heat, air or use of law books or difference as to time of use nor in fact, is there any complaint as to any distinction being made as to any of the privileges and advantages accorded to all lawyers alike in the use of the library facilities. In the *McLaurin* case there is a situation complained of which is much broader in scope and deals with a colored stu-

dent who under the facts, was confronted with numerous acts of segregation which the United States Supreme Court found actually prevented him from getting equal advantages in education so as to prepare him for the profession of teaching and leadership in that field. The court said: "Such restrictions impair and inhibit his ability to study, to engage in discussion and exchange of views with other students and in general to learn his profession." In the instant case the situation deals simply with the complaint of segregation alone, to-wit: The labelling of a table "colored" to which lawyers of this race are assigned in the quiet atmosphere of a law library where open discussion is not expected or permitted and where under the facts as previously stated no distinction in treatment as to the use of the library facilities generally is alleged.

This court refuses to issue the Writ of Mandamus prayed for.

/s/ Dan W. Jackson,
Judge

ROBERT WENDELL HAINSWORTH, APPELLANT,

NO. 12,663

vs.

HARRIS COUNTY COMMISSIONERS' COURT,

APPELLEE.

Appeal from the District Court of Harris County

This appeal by the appellant, a colored man, is from a judgment of the 129th District Court of Harris County,

Texas, Hon. Dan W. Jackson, Judge presiding without a jury, denying the appellant, who was the sole plaintiff below, a writ of mandamus requiring the appellees, who constituted the Commissioners' Court of Harris County, Texas, and were defendants below "to remove the sign, designated 'Colored,' from the table in the Harris County Law Library and to stop the arbitrary practice of restricting use of tables in the Harris County Courthouse Law Library, on the basis of color."

The court's judgment was so rendered and entered upon an agreed statement of all the facts, as made and signed by the attorneys for the parties, which is appended hereto as Exhibit A, and made a part hereof.

This Court, after having had the advantage of written briefs and oral arguments from both sides, as indicated, and the appellant having orally argued the cause for himself here, as the sole party thereto, in the same way the trial court's record shows he had done below, is constrained to, in all things, affirm the judgment.

Since the action was one for mandamus only, the burden was upon appellant to both plead—and prove with particularity—everything necessary to sustain his action as such. *Houston Tap and Brazoria R. Co. v. Randolph,* 24 Tex. 317; *Johnson v. Elliott, Tax Collector;* 168 S. W. 968, writ ref.; *Harmon v. City of Dallas,* 229 S. W. 2d. 825 writ ref., n.r.e.

He had to show, not only that he had made all necessary preliminary demands therefor, but just what practice he was complaining about, and his own justiciable interest therein, *Harney v. Pickens,* 120 Tex. 268, 37 S. W. 2d 717; *Hursey v. Bond,* 141 Tex. 337, 172 S. W. 2d 305; 28 Tex. Jur. 552; *Mitchell, et al v. Dixon, et al,* 140 Tex. 520, 168 S. W. 2d 564, opinion adopted; *Yett v. Cook,* 115 Tex. 205, 281 S. W. 837.

As the stipulation of all the facts shows, none of the indicated prerequisites to the issuance of the mandamus writ so sought were complied with. Indeed, while appellant undertakes to state, as the basis of his appeal, four points of error, they are all, in effect, mere abstractions which are made the basis for a general discussion by him upon wholly abstract principles. As such they are based on general authorities, mostly opinions of the Supreme Court of the United States, based upon facts having no applicability whatever to those here involved, as shown by the appended stipulation. While those opinions, as appellant contends, deal with and discuss such general questions as "the dignity of man" and "segregation", and have much to say about the Fourteenth and Fifteenth Amendments to the Constitution of the United States, they have no remote applicability to the issues raised in this case and are founded wholly upon the quoted stipulation of all the facts that were therein involved.

Indeed, as this Court sees it, appellant has presented no question whatever as to there having been any infringement of any constitutional rights of his, unless it could be said that his having been so seated in the library without discrimination or inequality, and without any impairment to him of its benefits, had constituted a discrimination against him; whereas, he plead no discrimination, inequality, no injury or damage; nor did he make any effort to prove any one of such things. Whereas, further, it would appear that the Supreme Court of the United States itself has held that such single segregation—if it could be called that—of the appellant in this instance, did not infringe upon any constitutional guaranty to him. *Plessy v. Ferguson,* 163 U. S. 537, 16 S. C. 1138, 41 L. Ed. 256; *McCabe v. Atchi-*

son, Topeka & S. F. Ry. Co., 235 U. S. 151, 35 S. C. 69, 59 L. Ed. 169; *Boyer v. Garrett,* 183 F. 2d 582, Cert. den. 340 U. S. 912, 71 S. C. 293, 95 L. Ed. 659; *Day v. Atlantic Greyhound Corporation,* 171 F. 2d 59 *Carr v. Corning,* 182 F. 2d 14.

Further, since, in the absence of a statement of facts in the usual way and in the presence of the mutual stipulation as to what the controlling facts were here, it will be, upon this appeal, conclusively presumed that all findings which could have been made from the evidence were made by the trial court in favor of the appellees. *Commercial Credit Corporation v. Smith,* 143 Tex. 612, 187 S. W. 2d 363; *McElyea v. Parker,* 125 Tex. 225, 81 S. W. 2d 649; *Lane v. Fair Stores, Inc.,* 243 S. W. 2d 683.

The judgment will be in all things affirmed.

Affirmed.

/s/ Geo. W. Graves
Associate Justice.

Judgment rendered, and opinion filed February 18, 1954.

EXHIBIT A

That in the Harris County Law Library situated in Harris County, Texas, there is a special table, designated 'Colored', for the exclusive use of litigants and lawyers who are colored and which is restricted from use by those who are not colored; and when use of the Library is made by colored litigants or lawyers one-at-a-time, they are restricted to the use of such table but when use of the Library is made by more of them than one-at-a-time, they are only restricted to the use of whatever table in the library to which they are *assinged* by the Librarian and the table to which they are assigned is restricted from use by litigants or lawyers who are not

colored throughout the time of its being used by those who are colored.

"That on December 20, 1951, the Plaintiff petitioned the Harris County Commissioners' Court to disapprove of the above policy of segregation and of designation of a table in the Harris County Law Library, 'Colored', and in their practice of the restrictive use of tables in the Harris County Law Library on the basis of color.

"That on January 24, 1952, the Harris County Commissioners' Court, the Defendants, denied the petition of the Plaintiff."

ROBERT WENDELL HAINSWORTH

No. 12,663 **vs.**

HARRIS COUNTY COMMISSIONERS' COURT

It is ordered that appellant's original and amended motions for rehearing be refused.

Entered March 11, 1954.

IN THE SUPREME COURT OF TEXAS

No. A-4631.

ROBERT WENDELL HAINSWORTH

Petitioner,

v.

HARRIS COUNTY COMMISSIONERS' COURT

Respondent.

ON APPLICATION FOR WRIT OF ERROR.

Per Curiam.

The only record before us as to the facts of the case, and the only thing disclosed in the way of proof offered

at the trial, is a one-page stipulation of the parties which does not embody all the facts necessary to be established by petitioner (as plaintiff below) in order to present for decision the constitutional question discussed in petitioner's brief. The application will, accordingly, be stamped: REFUSED. NO REVERSIBLE ERROR.
Filed in SUPREME COURT OF TEXAS May 12, 1954.
Geo. H. Templin, Clerk

IN THE SUPREME COURT OF TEXAS

No. A-4631. **June 23, 1954**

ROBERT WENDELL HAINSWORTH

vs.

HARRIS COUNTY COMMISSIONERS COURT.

The motion for rehearing herein having heretofore been submitted to the Court and after due consideration of same, it is ordered that the said motion be, and is hereby, overruled.

APPENDIX C.

Copy of Judgment Sought To Be Reviewed.

IN THE SUPREME COURT OF TEXAS

No. A-4631 **May 12, 1954**

Robert Wendell Hainsworth
vs.
Harris County Commissioners Court

From Harris County First District.

This day came on to be heard the application of petitioner for a writ of error to the Court of Civil Appeals for the **First** District and the same having been duly con-

sidered, and the Court having determined that the application presents no error which requires a reversal of the judgment of the Court of Civil Appeals, it is ordered that the application be refused; that the appellant, **Robert Wendell Hainsworth and his Surety, Lawyers Surety Corporation,** pay all costs incurred on this application.

June 23, 1954

(No. A-4631)

This motion for rehearing herein having heretofore been submitted to the Court and after due consideration of same, it is ordered that the said motion be, and is hereby, overruled.